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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,209	10/17/2003	Roger E. Darois	D0188.70141US000	6653

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EXAMINER
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GHERBI, SUZETTE JAIME J

ART UNIT	PAPER NUMBER
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3738

DATE MAILED: 02/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/688,209

Applicant(s)

DAROIS ET AL.

Examiner

Suzette J Gherbi

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) 37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Objections*

1. Claim 37 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only and/or cannot depend from any other multiple dependent claim. See MPEP § 608.01(n). Accordingly, the claim has not been further treated on the merits.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 5-15, 19-25, 27-33 and 35-36 rejected under 35 U.S.C. 102(e) as being anticipated by Crawley et al. 2004/0260401. Crawley et al. discloses the invention as currently claimed comprising: A prosthetic device for repairing, reconstructing and/or augmenting; a defect or weakness in the wall of a muscle, tissue or organ comprising: a first portion that is tissue infiltratable (12,14 or 53-55); a second portion that is a

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barrier to tissue in-growth (see section [ 0038]); and an effective amount of at least on antimicrobial substance incorporated with the second portion; wherein the effective amount of the at least one substance is not incorporated with the first portion (it is inherent that because section [0013] does not limit where the antimicrobial substance and states "either or both" that the limitation is met). See [0005, 0013, 0027, 0028, 0037, and 0038].

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4, 16-18, 36 and 34 rejected under 35 U.S.C. 103(a) as being unpatentable over Crawley et al. in view of Fox, Jr. et al. 5,616,338. Crawley et al. has been disclosed above however Crawley et al. does not specify the type of antimicrobial as being silver or silver salts. Fox teaches that implantable devices i.e. hernia patches (see col. 3, line 15) may be coated with antimicrobial coatings made from silver or silver salts (see col. 13, lines 45-61). It would have been obvious to one having ordinary skill in the art at the time the invention was made to take the hernia device of Crawley et al. and utilize an antimicrobial agent selected from a silver or silver salt as taught by Fox Jr.

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et al. because both device contemplate the use of coating hernia patches made from Ptfе/jpolymer materials to provide an infection resistant device.

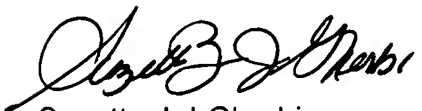
### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hessel et al. 6,726,660 ; Weadock 6,447,542 ; Liu et al. 5,578,046 ; and Maini WO 9603165A1 show related material.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 571-272-4751.

8. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

9. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Suzette J-J Gherbi  
14 February 2005